United States Department of Labor Employees' Compensation Appeals Board

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D.F., Appellant)
and) Docket No. 17-2027) Issued: September 13, 2018
DEPARTMENT OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION,))
Fort Myers, FL, Employer)
Appearances:	Case Submitted on the Record
Appellant, pro se	
Office of Solicitor, for the Director	

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge ALEC J. KOROMILAS, Alternate Judge VALERIE D. EVANS-HARRELL, Alternate Judge

On September 29, 2017 appellant filed a timely appeal from a June 28, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed this appeal as No. 17-2027.

By decision dated November 10, 2015, OWCP terminated appellant's wage-loss compensation effective November 15, 2015. Appellant requested an oral hearing with OWCP's Branch of Hearings and Review and in an August 26, 2016 decision, OWCP's hearing representative directed OWCP to obtain a current position description from the employing establishment with physical requirements and to compare the physical requirements of the current position description to the restrictions of appellant's treating physician to determine whether appellant had established disability for work on or after November 5, 2015. OWCP did not fully comply with these directives prior to issuing its December 14, 2016 merit decision. Appellant requested reconsideration of the December 14, 2016 decision on June 12, 2017. By decision dated June 28, 2017, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). Appellant appealed the June 28, 2017 decision to the Board.

The Board finds that as OWCP did not follow the August 26, 2016 directives of the hearing representative, the case was not in posture for a merit decision on the issue of whether appellant had established disability for work on or after November 5, 2015. As the December 14, 2016 merit

decision remains in an interlocutory posture, the June 28, 2017 non-merit decision is also in an interlocutory posture. Thus, this case is not in posture for a decision by the Board.¹ On return of the case record, OWCP should comply with the order of the hearing representative. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision on the claim.

IT IS HEREBY ORDERED THAT the June 28, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: September 13, 2018 Washington, DC

Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge Employees' Compensation Appeals Board

¹ Because OWCP has not appropriately developed the issue of whether appellant was capable of working full duty as directed by its hearing representative prior to issuing its December 14, 2016 merit decision that matter is in an interlocutory posture. *See* 20 C.F.R. § 501.2(c)(2) which provides, "The Board has jurisdiction to consider and decide appeals from final decisions of OWCP in any case arising under FECA. The Board may review all relevant questions of law, fact, and exercises of discretion (or failure to exercise discretion) in such cases.... There will be no appeal with respect to any interlocutory matter decided (or not decided) by OWCP during the pendency of a case." *See also C.D.*, Docket No. 17-1357 (issued May 4, 2018).